



October 21, 2022

VIA ELECTRONIC SUBMISSION (secretary@fmc.gov)

William Cody
Secretary
Federal Maritime Commission
800 North Capitol Street, N.W.
Washington, D.C. 20573

RE: Definition of Unreasonable Refusal to Deal or Negotiate with Respect to Vessel Space Accommodations Provided by an Ocean Common Carrier [Doc. No. 22-24]; 87 Fed. Reg. (182): 57674 (September 21, 2022)

Dear Secretary Cody,

Tyson Foods, Inc. (Tyson) is an American, multinational food company based in Springdale, Arkansas. Our company produces chicken, beef, pork and prepared foods. Tyson depends on an effective and functional supply chain to ensure our food is accessible every day.

Tyson appreciates the Federal Maritime Commission (FMC or Commission) expeditious development of regulatory frameworks resulting from the Ocean Shipping Reform Act of 2022 (OSRA). The regulatory requirements associated with OSRA are critical to providing long-term solutions to our supply chains that utilize ocean carriers.

Tyson supports the comments provided by the Agriculture Transportation Coalition and the National American Meat Institute. In addition, we request that the FMC consider the following as the Commission develops and finalizes not only this regulatory proposal, but related proposals associated with OSRA.

Transparency is Key

Tyson supports changes to ensure the flow of information is balanced and allows each party, both carriers and shippers, to have fair and informed discussions regarding vessel space.

In many cases, the lack of information flow between shippers, carriers (and their service providers) and terminal operators leads to costly delays and missed bookings, which can also result in unnecessary fees and fines. For shippers, it raises questions around available carrier capacity and the willingness of carriers to negotiate bookings in good faith. We expect carriers to be frustrated if they believe shippers are not operating in good faith as well.

To ensure efficiency and mutual trust, carriers should provide accurate forecasting and updated information so shippers can fulfill their obligation to position their shipments at port terminals within the agreed upon time windows. Based on available port data, vessels are departing key West Coast ports partially full, utilizing only 50% to 60% of their capacity. This underutilization has continued even as overall port congestion has eased in recent months. Shippers continue to experience repeated instances when their shipments have been delivered to a port terminal, as agreed upon, only to be told the booking is no longer available on that vessel. If a shipper has met the carrier requirements for the shipment and has delivered that container on time, why is that container not allowed to load?

This lack of transparency for shippers exacerbates an already stressed supply chain. We believe this proposed rule will enable the FMC to ensure carriers are providing a sound business rationale for either failing to accept a booking request or failing to fulfill an existing booking agreement.

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Tyson is a food company, and we depend on thousands to help produce and deliver our food. If our food cannot be made or delivered, people go hungry. Our ability to supply food is tied to an effective supply chain and the FMC leadership is critical to ensure that the supply chain is functional.

Changes are needed to ensure the flow of information is balanced and allows each party, both carriers and shippers, to have fair and informed discussions regarding vessel space. Tyson supports greater transparency in vessel capacity, loading timeframes, and changes to vessel schedules that would impact contracted delivery times. Carriers providing sufficient transparency to shippers is essential to ensure cargo is properly documented and ready to ship when loading timeframes are available. This also helps ensure carriers do not have rollover of cargo and a vessel that is at capacity.

In addition to the points outlined above, we recommend the Commission to consider how it intends to address forthcoming changes to the import rotation and the impact of these changes on port congestion. Shippers are preparing for ocean carriers to begin the transition to pre-pandemic routes and capacity, this will lead to capacity holes and delays at some ports. We encourage the Commission to work with stakeholders to ensure minimal disruption for both exporters and American consumers.

Thank you for your consideration and should you have any questions, please contact me.

Sincerely,

Patrick Simmons
Vice President, Supply Chain
Transportation